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control facilities. Pub.L. 85-767, Aug. 27, 1958, 72 Stat. 908; Pub.L. 88-423, § 4(b), Aug. 13, 1964, 78 Stat. 397.

Library references: Public Lands C-20; C.J.S. Public Lands § 23.

**Historical Note**

1964 Amendment. Subsec. (d). Pub.L. 1964 U.S.Code Cong. and Adm.News, p. 88-423 added subsec. (d). 2708.

Legislative History. For legislative history and purpose of Pub.L. 88-423, see

**§ 210. Defense access roads**

(a) The Secretary is authorized, out of the funds appropriated for defense access roads, to provide for the construction and maintenance of defense access roads (including bridges, tubes, and tunnels thereon) to military reservations, to defense industries and defense industry sites, and to the sources of raw materials when such roads are certified to the Secretary as important to the national defense by the Secretary of Defense or such other official as the President may designate, and for replacing existing highways and highway connections that are shut off from the general public use by necessary closures or restrictions at military reservations and defense industry sites.

(b) Funds appropriated for the purposes of this section shall be available, without regard to apportionment among the several States, for paying all or any part of the cost of the construction and maintenance of defense access roads.

(c) Not exceeding \$5,000,000 of any funds appropriated under the Act approved October 16, 1951 (65 Stat. 422), may be used by the Secretary in areas certified to him by the Secretary of Defense as maneuver areas for such construction, maintenance, and repair work as may be necessary to keep the highways therein, which have been or may be used for training of the Armed Forces, in suitable condition for such training purposes and for repairing the damage caused to such highways by the operations of men and equipment in such training.

(d) Whenever any project for the construction of a circumferential highway around a city or of a radial intracity route thereto submitted by any State is certified by the Secretary of Defense, or such other official as the President may designate, as being important for civilian or military defense, such project may be constructed out of the funds heretofore or hereafter authorized to be appropriated for defense access roads.

(e) If the Secretary shall determine that the State highway department of any State is unable to obtain possession and the right to enter upon and use the required rights-of-way, lands, or interest in

lands, improved by this section, is intended to acquire for projects general, in the interest involved, by purchase with the law of June 26, 1931; requiring and include the title, advertising shall be paid to the Federal rights-of-way, lands further authority of the United States required in section to political subdivisions and conditions of State highway conveyance is

(f) The defense ad-

(g) If the expeditionary advance to the roads training Federal rights-of-way so advanced authorized upon voucher of-way which has mination of the provisions of the advance for the payments shall be the funds

(h) Funds available

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lands, improved or unimproved, required for any project authorized by this section with sufficient promptness, the Secretary is authorized to acquire, enter upon, take possession thereof, and expend funds for projects thereon, prior to approval of title by the Attorney General, in the name of the United States, such rights-of-way, lands, or interest in lands as may be required in such State for such projects by purchase, donation, condemnation, or otherwise in accordance with the laws of the United States (including the Act of February 26, 1931; 46 Stat. 1421). The cost incurred by the Secretary in acquiring any such rights-of-way, lands, or interest in lands may include the cost of examination and abstract of title, certificate of title, advertising, and any fees incidental to such acquisition; and shall be payable out of the funds available for paying the cost or the Federal share of the cost of the project for which such rights-of-way, lands, or interests in lands are acquired. The Secretary is further authorized and directed by proper deed executed in the name of the United States to convey any lands or interests in lands acquired in any State under the provisions of prior Acts or of this section to the State highway department of such State or to such political subdivision thereof as its laws may provide, upon such terms and conditions as may be agreed upon by the Secretary and the State highway department, or political subdivisions to which the conveyance is to be made.

(f) The provisions of section 112 of this title are applicable to defense access roads.

(g) If the Secretary shall determine that it is necessary for the expeditious completion of any defense access road project he may advance to any State out of funds appropriated for defense access roads transferred and available to the Department of Commerce the Federal share of the cost of construction thereof to enable the State highway department to make prompt payments for acquisition of rights-of-way, and for the construction as it progresses. The sums so advanced shall be deposited in a special fund by the State official authorized by State law to receive such funds, to be disbursed solely upon vouchers approved by the State highway department for rights-of-way which have been or are being acquired and for construction which has been actually performed under this section. Upon determination by the Secretary that funds advanced to any State under the provisions of this subsection are no longer required, the amount of the advance which is determined to be in excess of requirements for the project shall be repaid upon his demand, and such repayments shall be returned to the credit of the appropriation from which the funds were advanced.

(h) Funds appropriated for the purposes of this section shall be available to pay the cost of repairing damage caused to highways by

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the operation of vehicles and equipment in the construction of classified military installations and facilities for ballistic missiles if the Secretary shall determine that the State highway department of any State is, or has been, unable to prevent such damage by restrictions upon the use of such highways without interference with, or delay in, the completion of a contract for the construction of such military reservations or installations. This subsection shall apply notwithstanding any provision of contract holding a party thereto responsible for such damage, if the Secretary of Defense or his designee shall determine, in fact, that construction estimates and the bid of such party did not include allowance for repairing such damage. This subsection shall apply to damage caused by construction work commenced prior to June 1, 1961, and still in progress on that date and construction work which is commenced or for which a contract is awarded on or after June 1, 1961. Pub.L. 85-767, Aug. 27, 1958, 72 Stat. 908; Pub.L. 86-657, § 8(d), July 14, 1960, 74 Stat. 524; Pub.L. 87-61, Title I, § 105, June 29, 1961, 75 Stat. 123.

## Historical Note

References in Text. The Act approved October 16, 1951, referred to in subsec. (c), means Act Oct. 16, 1951, c. 507, 65 Stat. 422, which was repealed by Pub.L. 85-767, § 2 [§3].

The Act of February 26, 1931, referred to in subsec. (e), is classified to sections 238a-238e of Title 40, Public Buildings, Property and Works.

1961 Amendment. Subsec. (h). Pub.L. 87-61 added subsec. (h).

1960 Amendment. Subsec. (g). Pub.L. 86-657 added subsec. (g).

Legislative History: For legislative history and purpose of Pub.L. 86-657, see 1960 U.S.Code Cong. and Adm.News, p. 3159. See, also, Pub.L. 87-61, 1961 U.S.Code Cong. and Adm.News, p. 1788.

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## Library references

War and National Defense §§ 40, 53,  
C.J.S. War and National Defense §§ 48,  
61.

## 1. Military reservation

Former section 106 of this title gave full authority for construction and maintenance of access road to Fort McClellan where many thousand soldiers were being trained daily for military service, since the fort was a "military reservation" within said former section 106 which authorized maintenance and construction of access roads to military reservations. Brock v. City of Anniston, 1943, 14 So.2d 519, 244 Ala. 544.

## 2. State and municipal ordinances

Where contemplated widening and improvement of street as an access road to military reservation was being done by federal government and paid for entirely with federal funds under agreement with State Highway Department, provision of city ordinance agreeing to hold state harmless against suits because

of the improvement of improvement by the into one by the city's city liable for conse Brock v. City of Ann 519, 244 Ala. 544.

## 2. Waiver of rules

Rules of state hi and federal public i subcontractor's name, let, etc., shall be in contractor's proposal way improvement e directory and subject agencies. Horvitz v. E.2d 405, 74 Ohio App.

Where defense hi contract was let on often consent to sublet of should not relieve responsibility for ful state highway depart public roads bureau's sions in department's bureau's rules for contractors' names, item in contractor's prop mentally affect rig cerned or those of fder or taxpayer. Id.

## 4. Contract with U

Where Federal Co Roads and Missour sion entered into former section 101 et widenin and exte an "access road" t industry but the Commission entered with contractors fo there was no "priv between United States and the United Sta expense incurred bing, relocating and pipe line as a resul ilic Water Supply Co County, Mo. v. U. Supp. 60.

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of the improvement did not convert the improvement by the federal government into one by the city so as to render the city liable for consequential damages. *Brock v. City of Anniston*, 1043, 14 So.2d 519, 244 Ala. 514.

### 3. Waiver of rules and regulations

Rules of state highway department and federal public roads bureau that subcontractor's name, items to be sublet, etc., shall be included in principal contractor's proposal for defense highway improvement contract are merely directory and subject to waiver by such agencies. *Horyitz v. Sours*, 1043, 58 N.E.2d 405, 74 Ohio App. 467.

Where defense highway improvement contract was let on condition that written consent to sublet any portion thereof should not relieve contractor of responsibility for fulfillment of contract, state highway department's and federal public roads bureau's waivers of provisions in department's specifications and bureau's rules for inclusion of subcontractors' names, items to be sublet, etc., in contractor's proposal, did not detrimentally affect rights of parties concerned or those of any prospective bidder or taxpayer. *Id.*

### 4. Contract with United States

Where Federal Commissioner of Public Roads and Missouri Highway Commission entered into contract, under former section 101 et seq. of this title, for widening and extending an avenue as an "access road" to side of a defense industry but the Missouri Highway Commission entered into all contracts with contractors for construction work, there was no "privity of contract" between United States and the contractors, and the United States was not liable for expense incurred by plaintiff in removing, relocating and repairing its water pipe line as a result of the project. *Public Water Supply Dist. No. 6 of Jackson County, Mo. v. U. S.*, D.C.Mo.1910, 66 F.Supp. 66.

To sustain right to sue the United States for expenses incurred by plaintiff in removing, relocating and repairing its pipeline as a result of widening and extending avenue as an "access road" to site of a defense industry, plaintiff must rest its action on a contract, express or implied in fact, not in law. *Id.*

### 5. Subletting

The concurrence of federal public roads bureau in state highway department's letting of contract for construction of portion of defense highway improvement constituted conclusive determination that subcontractor, named in contractor's proposal, was contractor of recognized standing, with record of satisfactory performance, and that work to be sublet did not constitute major item of contract work within bureau's rule that named subcontractor, in such case, might perform specified items of work. *Horyitz v. Sours*, 1043, 58 N.E.2d 405, 74 Ohio App. 467.

### 6. Actions for damages—Generally

Where widening or extending of an avenue, under former section 101 et seq. of this title, necessitated relocating of plaintiff's water pipeline but court having jurisdiction of condemnation proceeding found that plaintiff had no claim against United States for any property of plaintiff taken by reason of right of eminent domain, the decision was res judicata and precluded plaintiff from asserting that the damage done to pipeline was incident to the condemnation proceeding, in subsequent action against the United States to recover expenses incurred by plaintiff. *Public Water Supply Dist. No. 6 of Jackson County, Mo. v. U. S.*, D.C.Mo.1910, 66 F.Supp. 66.

### 7. — Jurisdiction

Where Federal Commissioner of Public Roads entered into contract with Missouri Highway Commission, under former section 101 et seq. of this title, but Missouri Highway Commission entered into all contracts with contractors for construction project, federal district court did not have jurisdiction under Tucker Act, former section 41(20) [now 1346] of Title 28, to entertain cause of action asserted against United States by plaintiff for expenses incurred in relocating and repairing its pipeline as a result of the project. *Public Water Supply Dist. No. 6 of Jackson County, Mo. v. U. S.*, D.C.Mo.1910, 66 F.Supp. 66.

### 8. — Estoppel

Where street improvement was undertaken as federal project to provide access road to military reservation, city was not "estopped" from permitting change in street by reason of establishment and improvement of street some 20

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years before and laying out of pavement at expense of property owners and planting of trees and shrubbery in parkway. Brock v. City of Anniston, 1943, 14 So.2d 510, 244 Ala. 514.

**9. — Burden of proof**

Where plaintiff sought to recover from government expenses incurred in removing, relocating, and repairing pipeline as result of widening and extending an avenue as an "access road" to site of a defense industry to establish that action rested on contract plaintiff had burden of establishing some privity of contract between the contractor who allegedly

caused damage to pipeline and the United States. Public Water Supply Dist. No. 6 of Jackson County, Mo. v. U. S., D.C.Mo.1916, 66 F.Supp. 66.

**10. — Evidence**

Where a street was being improved as a federal project under agreement with State Highway Department to provide access road to military reservation, record was insufficient to establish that method adopted was but a subterfuge to enable city to evade constitutional liability for consequential damages. Brock v. City of Anniston, 1943, 14 So.2d 510, 244 Ala. 514.

**§ 211. Timber access road hearings**

With respect to any proposed construction of a timber access road from funds authorized for carrying out the provisions of sections 204, 205, and 210 of this title, advisory public hearings may be held at a place of<sup>1</sup> convenient or adjacent to the area of construction with notice and reasonable opportunity for interested persons to present their views as to the practicability and feasibility of such construction. Pub.L. 85-767, Aug. 27, 1958, 72 Stat. 909.

<sup>1</sup> So in original.

Library references: Woods and Forests ~~com~~s; C.J.S. Woods and Forests §§ 11, 12.

**§ 212. Inter-American Highway**

(a) Funds appropriated for the Inter-American Highway shall be used to enable the United States to cooperate with the Governments of the American Republics situated in Central America—that is, with the Governments of the Republic of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama—in the survey and construction of the Inter-American Highway within the borders of the aforesaid Republics, respectively. Not to exceed one-third of the appropriation authorized for each fiscal year may be expended without requiring the country or countries in which such funds may be expended to match any part thereof, if the Secretary of State shall find that the cost of constructing said highway in such country or countries will be beyond their reasonable capacity to bear. The remainder of such authorized appropriations shall be available for expenditure only when matched to the extent required by this section by the country in which such expenditure may be made. Expenditures from the funds available on a matching basis shall not be made for the survey and construction of any portion of said highway within the borders of any country named herein unless such country shall provide and make available for expenditure in conjunction therewith a sum equal to at least one-third of the expenditures that may be in-

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Remarks: Bob: Red informed me that the Virginia Road Commissioner had suggested the possibility of defense access funds to finance work on the corner of Glebe and Route 123. The attached is the statute pertaining to defense access roads, and also attached is this year's military construction bill authorizing the use of funds appropriated to DOD for this purpose when certified by the Secretary of Defense as important to the national defense. Whether our problem can be brought within this authority is a question we should explore, and I believe Red wants to talk further about it when you have had a look at it.

*L.R.Houston*

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